

ORIGINAL



0000108184

MEMORANDUM
RECEIVED

TO: Docket Control

2010 MAR -2 P 3: 52

FROM: Steven M. Olea
Director
Utilities Division

AZ CORP COMMISSION
DOCKET CONTROL

DATE: March 2, 2010

RE: STAFF'S RESPONSE TO WRITTEN COMMENTS IN THE MATTER OF
PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY (DOCKET
NO. RE-00000C-09-0427)

Attached is the Staff Report regarding written comments made by interested parties on Proposed Rulemaking on Electric Energy Efficiency, pursuant to Decision No. 71436. Decision No. 71436 ordered the Utilities Division to file with the Commission's Docket Control on or before March 2, 2010, a document including (1) a summary of any initial written comments filed by interested persons between the effective date of that Decision (December 18, 2009) and February 23, 2010, and (2) the Utilities Division's responses to those comments.

SMO:BEK:lhbm

Originator: Barbara Keene

Arizona Corporation Commission
DOCKETED

MAR - 2 2010

DOCKETED BY	
-------------	--

Service List for: PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY
Docket No. RE-00000C-09-0427

Mr. C. Webb Crockett
Mr. Patrick J. Black
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Mr. Kevin C. Higgins
Energy Strategies, LLC
215 South State Street, Suite 200
Salt Lake City, Utah 84111

Ms. Mona Tierney-Lloyd
EnerNOC, Inc.
Post Office Box 378
Cayucos, California 93430

Mr. Michael A. Curtis
Mr. William P. Sullivan
Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
501 East Thomas Road
Phoenix, Arizona 85012-3205

Mr. Tyler Carlson
Mohave Electric Cooperative, Inc.
Post Office Box 1045
Bullhead City, Arizona 86430

Mr. Dennis Hughes
Navopache Electric Cooperative, Inc.
1878 West White Mountain Blvd.
Lakeside, Arizona 85929

Mr. Michael M. Grant
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Mr. John V. Wallace
Grand Canyon State
Electric Cooperative Association
120 North 44th Street, Suite 100
Phoenix, Arizona 85034

Mr. Michael W. Patten
Mr. Jason D. Gellman
Roshka Dewulf & Patten, PLC.
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Ms. Laura E. Sanchez
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, California 94104

Ms. Amanda Ormond
The Ormond Group, L.L.C.
7650 South McClintock Drive, Suite 103-
282
Tempe, Arizona 85283

Mr. Joshua Rosen
Southwest Solar Technologies, Inc.
4148 North Arcadia Drive
Phoenix, Arizona 85018

Mr. Philip J. Dion
Tucson Electric Power Company
UNS Electric, Inc.
One South Church Avenue, Suite 200
Tucson, Arizona 85701

Mr. David Berry
Western Resource Advocates
Post Office Box 1064
Scottsdale, Arizona 85252

Mr. Jeff Schlegel
SWEEP
1167 West Samalayuca Drive
Tucson, Arizona 85704

Mr. Jay Moyes
1850 North Central Avenue, 1100
Phoenix, Arizona 85004

Ms. Deborah R. Scott
Pinnacle West Capital Corporation
400 North 5th Street
P.O. Box 53999, MS 8695
Phoenix, Arizona 85072-3999

Mr. Dan Pozefsky
Ms. Jodi Jerich
RUCO
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007

Mr. Justin Brown
Southwest Gas Corporation
5241 Spring Mountain Road
P.O. Box 98510
Las Vegas, Nevada 89193-8510

Mr. Ladel Laub
Dixie-Escalante Rural Electric Assoc., Inc.
71 East Highway 56
Beryl, Utah 84714

Mr. Carl Albrecht
Garkane Energy Cooperative, Inc.
P.O. Box 465
Loa, Utah 84747

Mr. Michael Fletcher
Columbus Electric Cooperative, Inc.
P.O. Box 631
Deming, New Mexico 88031

Mr. Richard Adkerson
Ajo Improvement Company
P.O. Drawer 9
Ajo, Arizona 85321

Mr. Tim Hogan
202 East McDowell Rd., 153
Phoenix, Arizona 85004

Mr. Jeffrey Woner
K.R. Saline & Assoc., PLC

160 North Pasadena, Suite 101
Mesa, Arizona 85201
Mr. Larry Robertson, Jr.
P.O. Box 1448
Tubac, Arizona 85646

Mr. Russ Barney
Graham County Utilities, Inc.
P.O. Drawer B
Pima, Arizona 85543

Mr. Douglas Mann
Semstream Arizona Propane, L.L.C.
200 West Longhorn
Payson, Arizona 85541

Mr. Marcus Middleton
P.O. Box 245
Bagdad, Arizona 86321

Mr. Scott Canty
The Hopi Tribe
P.O. Box 123
Kykotsmovi, Arizona 86039

**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY

DOCKET NO. RE-00000C-09-0427

STAFF RESPONSE TO WRITTEN COMMENTS

MARCH 2, 2010

STAFF ACKNOWLEDGMENT

The Staff Response to Written Comments for Proposed Rulemaking On Electric Energy Efficiency, Docket No. RE-00000C-09-0427, was the responsibility of the Staff member listed below.

A handwritten signature in cursive script that reads "Barbara Keene".

Barbara Keene
Public Utilities Analyst Manager

TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
SUMMARY OF WRITTEN COMMENTS MADE REGARDING THE PROPOSED RULES AND STAFF'S RESPONSE TO THEM	1

Introduction

The Arizona Corporation Commission ("Commission") issued Decision No. 71436 on December 18, 2009. In that Decision, the Commission ordered that a Notice of Proposed Rulemaking including proposed Electric Energy Efficiency Rules be filed with the Office of the Secretary of State for publication. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on January 15, 2010.

Decision No. 71436 requested that interested parties provide initial comments concerning the Notice of Proposed Rulemaking by filing written comments with the Commission's Docket Control by February 16, 2010, and comments in response to other interested parties' comments by February 23, 2010.

Decision No. 71436 also ordered the Utilities Division to file with the Commission's Docket Control on or before March 2, 2010, a document including (1) a summary of any initial written comments filed by interested persons between the effective date of that Decision (December 18, 2009) and February 23, 2010, and (2) the Utilities Division's responses to those comments.

Initial written comments were received from the Electric Cooperatives;¹ EnerNOC, Inc.; OPOWER; The Southwest Energy Efficiency Project ("SWEET"); Tucson Electric Power Company and UNS Electric, Inc. ("TEP and UNSE"); and Western Resource Advocates ("WRA"). Reply comments were received from Arizona Public Service Company ("APS") and the Electric Cooperatives.

SUMMARY OF WRITTEN COMMENTS MADE REGARDING THE PROPOSED RULES AND STAFF'S RESPONSE TO THEM

ARTICLE 24 ELECTRIC ENERGY EFFICIENCY STANDARDS

Written Comments Received on Proposed Electric Energy Efficiency Rules by Section

R14-2-2404 Energy Efficiency Standards

Issue: Energy efficiency standard

R14-2-2404(A) and (B) set forth the energy efficiency standard and ramp-up schedule. TEP and UNSE believe that the 22% cumulative savings and the resulting ramp-up schedule are not in the public interest. They believe that the record contains no evidence to support a 22% standard. TEP and UNSE believe that a utility-specific analysis to determine technical,

¹ Grand Canyon State Electric Cooperative Association filed comments on behalf of Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache Electric Cooperative, Inc.; Trico Electric Cooperative, Inc.; and Sulphur Springs Valley Electric Cooperative, Inc.

economic, and achievable potential is necessary and that the analysis may identify the need for a different standard percentage in each utility service area. TEP and UNSE note that the proposed standard is more aggressive than that of most other states using a standard based on previous year's sales. They also point out that other states use different methodologies to establish energy efficiency standards. In addition, utilities should have the flexibility to exchange renewable energy credits and efficiency standard requirements in order to meet both the Renewable Energy Standards and the proposed Energy Efficiency rules in an economical manner.

The Cooperatives believe that an energy efficiency goal/target based on member/customer participation in proven energy efficiency programs would be more appropriate than the annual rule requirements that are based on a percent reduction in kWh that will be difficult to measure. The Cooperatives also state that not counting efficiency improvements to the delivery system as stated in R14-2-2404(H) severely handicaps the Cooperatives in meeting the energy efficiency standard.

OPOWER expressed support for the proposed energy efficiency standards and believes that Arizona utilities would be able to count savings from behavior-based energy programs toward their annual energy efficiency goals.

SWEEP supports the proposed rule because: it is in the public interest, increasing energy efficiency will reduce total energy costs for ratepayers, increasing energy efficiency will reduce other costs, increasing energy efficiency will increase reliability of the electric grid, and that the Commission will be ensuring reliable electric service at reasonable rates and costs for ratepayers.

Analysis:

Staff points out that R14-2-2419 provides that a utility may petition the Commission to waive compliance with any provision of the Article. If an affected utility believes that the requirement in R14-2-2404 would not be an appropriate goal, then the affected utility could request a waiver of the requirement. However, it is unknown at this time whether the Commission would grant the waiver.

Resolution: No changes required.

Issue: Demand response limit of two percentage points

R14-2-2404(C) allows up to two percentage points of the 22% energy efficiency standard be met by demand response and load management programs. EnerNOC states that 5% by 2020 would be more in line with goals established by other state commissions. EnerNOC proposes that the cap be raised to 5% or a range of 2% to 5%, or the demand response target (5%) be separated from the energy efficiency target (17%), or require the 22% reduction in consumption to also produce a 5% reduction in peak load requirements. The Cooperatives agree with EnerNOC that the demand response cap should be raised.

EnerNOC also wants the rule to be clear as to whether the 2% peak load reduction will be for existing or incremental measures. In addition, the rules should explicitly include third-party demand response providers.

The Cooperatives believe that a utility should be able to count any and all demand response and energy efficiency measures it has invested in since 2005 towards meeting the energy efficiency standard.

EnerNOC further requests that workshops be held and that the Commission determine baseline methodology before program plans are submitted.

Analysis:

Staff believes that allowing two percentage points of the 22% energy efficiency standard be met by demand management and load response is sufficient. An affected utility may have more motivation to implement demand response programs than to implement energy efficiency programs because the demand response programs may reduce costs without reducing revenue because electric usage is shifted in time instead of reduced. The affected utility may do more demand response than the 2 percentage points, but the additional amount would not count toward meeting the energy efficiency standard.

The proposed rules do not provide for counting peak demand reductions, resulting from demand response and load management programs, that occurred before the rule's effective date toward meeting the energy efficiency standard. However, the demand response or load management program could have been implemented before the rule's effective date and its resulting peak demand reductions that occur after the rule's effective date would count toward meeting the energy efficiency standard.

The proposed rules do not prohibit affected utilities from utilizing third-party demand response providers. In addition, the Commission can hold workshops on baseline methodology, if desired, without such a provision in rules.

Resolution: No changes required.

R14-2-2407 Commission Review and Approval of DSM Programs and DSM Measures

Issue: Information on societal benefits and savings

The Cooperatives believe that language about societal benefits and savings should be eliminated.

Analysis:

Staff believes that estimating benefits and savings is an important part of deciding which energy efficiency programs to propose.

Resolution: No changes required.

R14-2-2409 Reporting Requirements

Issue: Environmental benefits/savings

WRA recommends that the language in R14-2-2409(A)(4)(g) be changed from "The environmental savings realized, including emissions and water savings" to read "The environmental benefits realized, including reduced emissions and water savings" to provide clarity. WRA points out that the rules define "environmental benefits" but not "environmental savings."

Analysis:

Staff finds that WRA's recommendation would provide clarity without making a substantive change.

Resolution: The language in R14-2-2409(A)(4)(g) should be modified to read "The environmental benefits realized, including reduced emissions and water savings;" to provide clarity.

R14-2-2410 Cost Recovery

Issue: Fixed cost recovery

TEP and UNSE have proposed that the following language be included in the rule:

"An affected utility shall file within 90 days of approval of this standard a Fixed Cost Recovery Rate supporting the per kWh cost recovery shortfall created by reduced kWh sales due to DSM/EE programs. This Fixed Cost Recovery Rate will be equal to the non-fuel-related variable rate approved by the ACC in the Utility's most recent rate case. The Fixed Cost Recovery Deficiency calculation shall multiply the Fixed Cost Recovery Rate by the cumulative kWh sales reductions due to DSM/EE since the Utility's last rate case. Both the Fixed Cost Recovery Rate and the cumulative DSM/EE sales reductions shall be reset coincident with the effective date of applicable changes to the Utility's rates. The affected utility shall recover the Fixed Cost Recovery Deficiency through the annual true-up of the affected utility's DSM adjustor mechanism."

SWEEP supports the Commission in addressing disincentives to utility support of energy efficiency in parallel proceedings. The Cooperatives disagree with SWEEP that the rules can move forward without addressing utility fixed cost recovery.

APS disagrees with TEP and UNSE that the regulatory disincentives problem should be solved within the proposed rules. APS believes that the concerns relating to regulatory disincentives are being addressed in other proceedings underway before the Commission and that the Commission will adopt policies to address the issue no later than in an affected utility's next rate case.

Analysis:

Staff believes that a rate case is the most appropriate time to address fixed cost recovery. R14-2-2410(I) provides for the Commission to address recovery of fixed costs if requested to do so by an affected utility in a rate case.

Resolution: No changes required.

R14-2-2413 Baseline Estimation

Issue: Insert "the" before "baseline"

WRA has suggested that "the" be inserted before "baseline" in R14-2-2413(A) and (C).

Analysis:

Staff agrees with WRA's typographical correction. This is not a substantive change.

Resolution: The word "the" should be inserted before the word "baseline" in R14-2-2413(A) and (C).

R14-2-2418 Compliance by Electric Distribution Cooperatives

Issue: Goal of at least 75% of requirement in R14-2-2404

R14-2-2418(C) requires distribution cooperatives to submit an implementation plan that sets forth an energy efficiency goal for each year of at least 75% of the savings requirement specified in R14-2-2404. The Cooperatives propose that the language "of at least 75% of the savings requirement specified in R14-2-2404" be eliminated. Under the Cooperatives' proposal, the Commission would approve a plan for each cooperative that would identify appropriate goals.

Analysis:

Staff points out that R14-2-2419 provides that a utility may petition the Commission to waive compliance with any provision of the Article. If a cooperative believes that 75% of the requirement in R14-2-2404 would not be an appropriate goal, then the cooperative could request a waiver of the requirement. However, it is unknown at this time whether the Commission would grant the waiver.

Resolution: No changes required.

R14-2-2419 Waiver from the Provisions of this Article

Issue: "The affected utility" should be "An affected utility"

WRA has suggested that "The affected utility" be changed to "An affected utility" in R14-2-2419(B).

Analysis:

Staff agrees with WRA's typographical correction. This is not a substantive change.

Resolution: "The affected utility" should be changed to "An affected utility" in R14-2-2419(B).